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April 4, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 30, 2007

Case Number: TSO-0558

This decision concerns the eligibility of XXXX X. XXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, I find that the Individual's access authorization should not be restored.

I. BACKGROUND

The present proceeding involves an Individual who used a government computer to access sexually explicit material during working hours at a DOE owned facility.² This activity was detected and reported to the Local Security Office (LSO). As a result, the LSO conducted a Personnel Security Interview (PSI) of the Individual on October 24, 2006.³ DOE Exhibit 17. During the PSI, the Individual admitted that he had viewed sexually explicit internet sites, which he characterized as "R-rated," using a government computer over a period apparently beginning in June 2006 and ending in August 2006. *Id.* at 35-36, 41. The Individual indicated that these sites contained photographs of undressed women. *Id.* at 36-37, 41. The Individual also acknowledged that, during this period, he was aware that visiting sexually explicit internet sites on government computers was prohibited. *Id.* at 16-18, 26-27. During the PSI, the Individual

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The DOE security concern is only with the Individual's use of the government computer at work to access sexually explicit internet sites. The DOE expresses no concerns with regard to use of home computers for this purpose. See *Personnel Security Hearing (TSO-0212)*, <http://www.oha.doe.gov/cases/security/tso0212.pdf> at 12, f.n.9.

³ The October 24, 2006, PSI transcript appears in the record as DOE Exhibit 17.

denied that he was experiencing stress in his home life during the period in which he was viewing sexually explicit internet sites. *Id.* at 92. At no time during the PSI did the Individual indicate that his actions were the result of a compulsion or addiction.

Because the security concerns raised by the Individual's viewing of sexually explicit materials at the workplace were not resolved by the PSI, the LSO initiated an administrative review proceeding in accordance with 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has "violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security; . . . or violated or disregarded regulations, procedures, or guidelines pertaining to classified or sensitive information technology systems." 10 C.F.R. § 710.8(g) (*Criterion G*). The Notification Letter further alleges that the Individual has "engaged in . . . unusual conduct or is subject to . . . circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l) (*Criterion L*).

The Individual filed a request for a hearing. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA) who appointed me as Hearing Officer. At the hearing, the LSO presented no witnesses. The Individual testified himself and also presented three witnesses. *See* Transcript of Hearing, Case No. TSO-0558 (hereinafter cited as "Tr."). The LSO submitted 18 exhibits into the record; the Individual tendered two.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the evidence presented by both sides in this case.

III. FINDINGS OF FACT AND ANALYSIS

The Individual has admitted to using a government computer to visit sexually explicit internet sites. The Individual further admitted that he was aware that he was violating DOE policy by doing so. It is well settled that an individual's intentional misuse of a government computer indicates poor self-control, a lack of judgment, and an unwillingness to abide by rules and regulations. Moreover, the Individual's viewing of any form of sexually explicit material at his workplace raises serious questions about his self-control, judgment and discretion and susceptibility to coercion or exploitation. *See, e.g., Personnel Security Hearing (Case No. VSO-0435)*, 28 DOE ¶ 82,804 (2001). Therefore, the Individual's viewing of sexually explicit internet sites at his workplace raises significant questions about his reliability, trustworthiness and his ability to protect classified information. Accordingly, the LSO properly invoked Criteria L. The LSO also invoked Criterion G. However, the LSO did not explain the nexus between the derogatory information that is at the basis of the present case and this criterion. Nor is such a basis self-evident.⁴ Accordingly, I am considering the present case only under Criterion L.⁵

A finding of derogatory information does not, however, end the evaluation of evidence concerning an individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common-sense judgment in deciding whether the Individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether there is sufficient evidence of mitigation to resolve the security concerns raised by his misuse of a government computer and viewing of sexually explicit materials at his workplace. After considering all of the evidence in the record, I find that there is not.

At the hearing the Individual's spouse testified that she had been married to the Individual for 33 years.⁶ Tr. at 5. The Individual's spouse further testified that the Individual's viewing of sexually explicit material was out of character for the Individual. Tr. at 7-8. In contrast to the Individual's statements during the PSI, the Individual's spouse testified that the Individual's viewing of sexually explicit internet sites occurred during a particularly stressful period for their family, when their adult son stopped communicating with them and married outside of their faith. Tr. at 8-9. The Individual's wife further testified that the Individual had begun "a 12-step program for sexual addicts through our church." Tr. at 9. The Individual's spouse testified that

⁴ In his request for hearing, the Individual asserted that the computer he used to access sexually explicit internet sites did not contain any sensitive information. Request for Hearing at 2. I have reviewed the record, including the case evaluation sheets, and find that the LSO did not adequately explain its Criterion G security concerns.

⁵ Considering the present matter solely under Criterion L has no effect on either the analysis or outcome of this case.

⁶ Two of the Individual's supervisors also testified on his behalf. Tr. at 21-39. The Individual's supervisors generally testified that the Individual is a good employee and exhibits excellent character in their day-to-day interactions with him.

the Individual had grown and learned a great deal from his experience. Tr. at 15-16. Again, in contrast to the Individual's statements during the PSI, the Individual's spouse testified "that towards the end, right before he got caught, [the Individual] said that he had started to look at things other than nudity." Tr. at 11.

The Individual's testimony at the hearing convinced me that he is clearly genuinely remorseful for his conduct. Moreover, he clearly understands that his conduct was inappropriate. In contrast to his statements during the PSI, the Individual testified that his viewing of sexually explicit internet sites occurred during a particularly stressful period. Tr. at 40. Moreover, for the first time during the present proceeding, the Individual indicated that he was addicted to viewing sexually explicit materials. Tr. at 43. The Individual testified that he has been attending a 12-step program for sexual addiction. Tr. at 41. The Individual testified that he had not viewed sexually explicit material since August 2006. Tr. at 41. The Individual also testified that he was aware that he was being monitored while on the internet, yet nevertheless visited sexually explicit sites while using a government computer. Tr. at 44.

I note also the Individual's viewing of sexually explicit materials resulted in the Individual undergoing an examination by a psychologist employed by the Human Reliability Program (HRP). The HRP Psychologist recommended a six-month suspension of the Individual's HRP certification, and continuing monitoring of the Individual. On March 5, 2007, the HRP Psychologist issued a memorandum indicating that she was of the opinion that the Individual has met the criteria for HRP approval. Individual's Exhibit A.

As a Hearing Officer, I am required to engage in a risk analysis requiring the "careful weighing of a number of variables known as the whole person concept." *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines) at 1.* Among the variables I am required to consider is the nature, extent and seriousness of the conduct that has raised a security concern. In the present case, the nature, extent and seriousness of the Individual's conduct is significant enough to raise a security concern on one hand but, on the other hand, is not of a particularly severe gravity. The Individual clearly understands the nature of his transgressions, has clearly learned from the experience, and has apparently taken significant actions in an attempt to ensure that his inappropriate conduct will not recur. However, I find that the Individual has not sufficiently resolved the doubts raised by his previous actions. I remain concerned about the Individual's self-control and susceptibility to coercion or exploitation.

The Individual was well aware that viewing sexually explicit internet sites on government computers was prohibited. Moreover, the Individual was well aware that his internet use was being monitored and recorded. He nevertheless continued to repeatedly view the sexually explicit internet sites over an approximately three-month period until he was disciplined. These facts suggest that an element of compulsion was part of the motivation for the Individual's conduct. Moreover, the Individual now indicates that his conduct was due to a sexual addiction.⁷

⁷ The Individual produced no expert testimony to confirm that his behavior rises to the level of a sexual addiction. A letter from the HRP Psychologist which the Individual has submitted makes no mention of a sexual addiction.

If the Individual has a sexual addiction, it is likely that the viewing of sexually explicit material on government computers will recur unless that addiction has been successfully and completely treated. However, the only evidence in the record indicating that this addiction is under control is the testimony of the Individual and his spouse that he has begun a 12-step program for sexual addiction. Without more evidence on this issue, I cannot conclude that the Individual's sexual addiction is in remission and is likely to continue to remain in remission.

I am further concerned that if the Individual were to experience a relapse of his addiction, he would be particularly vulnerable to coercion or exploitation. I base this conclusion on the intolerance towards sexually explicit materials expressed by the Individual's spouse during the hearing. The Individual's spouse's testimony also indicated that the Individual's viewing of sexually explicit materials had shocked her and shaken her trust in him. Tr. at 8-12, 17.

Moreover, I am also concerned about the Individual's less than complete candor during the present proceeding. As discussed above, the Individual's statements during the present proceeding have at times been inconsistent. For example, during the PSI, the Individual denied that he was experiencing family stress during the period in which he was viewing sexually explicit material. During the PSI, the Individual also indicated that the sexually explicit material he was viewing was limited to undressed women. At the hearing, the testimony of his spouse contradicted those assertions.

For these reasons, I find that the Individual has not resolved the security concerns raised by his misuse of a government computer and viewing of sexually explicit materials at his workplace.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criterion L. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: April 4, 2008